



(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750-AH84

Defense Federal Acquisition Regulation Supplement: Preparation of Letter of Offer and Acceptance (DFARS Case 2012-D048)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the contracting officer role in assisting the DoD implementing agency in preparation of the letter of offer and acceptance for a foreign military sales program that will require an acquisition.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 28793 on May 16, 2013, to address the contracting officer role

in assisting the DoD implementing agency in preparation of the letter of offer and acceptance for a foreign military sales program that will require an acquisition. No respondents submitted public comments in response to the proposed rule. There are no changes from the proposed rule in the final rule.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This action is necessary because the directions to the contracting officer at PGI 225.7302 may have impact on prospective contractors, and therefore require relocation to the DFARS. The objective of this rule is to provide direction to the contracting officer on actions required to work with the prospective contractor to assist the DoD implementing activity in preparing the letter of offer and acceptance for a foreign military sales program that requires an acquisition.

There were no comments in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments.

The rule will apply to approximately 380 small entities, based on the FPDS data for FY 2011 of the number of noncompetitive contract awards to small business entities that exceed \$10,000 and use FMS funds.

There is no required reporting or recordkeeping. The rule requires the contracting officer to communicate with a prospective FMS contractor in order to assist the DoD implementing agency in preparation of the letter of offer and acceptance. The contracting officer may request information on price, delivery, and other relevant factors, and provide information to the prospective contractor with regard to the FMS customer.

DoD does not expect the rule will have a significant economic impact on a significant number of small entities. No significant alternatives were identified that would accomplish the objectives of the rule.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Manuel Quinones

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225-FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 225.7302 is revised to read as follows:

225.7302 Preparation of letter of offer and acceptance.

For FMS programs that will require an acquisition, the contracting officer shall assist the DoD implementing agency

responsible for preparing the Letter of Offer and Acceptance (LOA) by—

(1) Working with prospective contractors to—

(i) Identify, in advance of the LOA, any unusual provisions or deviations (such as those requirements for Pseudo LOAs identified at PGI 225.7301);

(ii) Advise the contractor if the DoD implementing agency expands, modifies, or does not accept any key elements of the prospective contractor's proposal;

(iii) Identify any logistics support necessary to perform the contract (such as those requirements identified at PGI 225.7301); and

(iv) For noncompetitive acquisitions over \$10,000, ask the prospective contractor for information on price, delivery, and other relevant factors. The request for information shall identify the fact that the information is for a potential foreign military sale and shall identify the foreign customer; and

(2) Working with the DoD implementing agency responsible for preparing the LOA, as specified in PGI 225.7302.

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